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9 Attorneys for Defendants
10 USA Cycling, Inc. and Linda Buffetti

11 UNITED STATES DISTRICT COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 SAN FRANCISCO DIVISION

14 CORNEALIUS LOPES,) Case No.: C 07-6213 PJH
15 Plaintiff,) DECLARATION OF DAVID IAN
16 vs.) DALBY IN RESPONSE TO JULY 9,
17 FREEMONT FREEWHEELER, et al.,) 2008 ORDER AFTER HEARING
18 Defendants.) Complaint Filed: November 2, 2007

19
20 I, DAVID IAN DALBY, declare:

21 1. I am an attorney at law licensed to practice before this Court and I am a
22 member of Hinshaw & Culbertson LLP, attorneys for defendant USA CYCLING, INC.
23 and LINDA BUFFETTI. I have personal knowledge of the facts recited in this
24 Declaration and could competently testify thereto if called upon to do so.

25 2. Plaintiff Cornealius Lopes filed an action against numerous defendants
26 entitled *Cornealius Lopes, et al. v. Fremont Freewheelers, et al.*, Alameda County
27 Superior Court, No. HG06260161 on March 16, 2006. That Alameda County lawsuit

1 arose out of the same June 12, 2004 incident that is the subject of this action in the United
2 States District Court. Attached hereto is Exhibit A is a true and accurate copy of the
3 Complaint in Alameda County Superior Court Case No. HG06260161.

4 3. In Case No. HG06260161, I represented defendants Fremont Freewheelers
5 Bicycle Club, Jason Sage, USA Cycling, Inc., Jeff Wu, Bob Parker, Paul Chuck, Larry
6 Upthegrove and Lloyd Rath. The original complaint in Case No. HG06260161 contained
7 causes of action for personal injuries based upon a motor vehicle claim, a general
8 negligence claim and a premises liability claim.

9 4. On June 22, 2007, Case No. HG06260161 was assigned to Department 511
10 of the Alameda County Superior Court for a civil jury trial on June 25, 2007. The jury
11 trial commenced on June 26, 2007. During the course of the trial, the court granted a
12 motion for a non-suit as to defendants USA Cycling, Inc. and Mr. Paul Chuck.

13 5. Attached hereto as Exhibit B is true and accurate copy of the register of
14 actions from the Alameda County Superior Court, Case No. HG06260161.

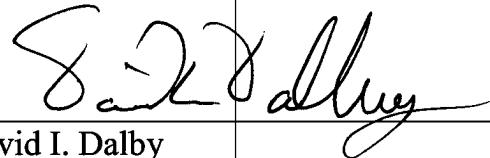
15 6. On July 16, 2007, plaintiffs filed a motion and supporting papers in support
16 of a motion to amend plaintiff's complaint to add causes of action for intentional
17 infliction of emotional distress, negligent infliction of emotional distress and malicious
18 prosecution – prior criminal proceeding, against defendants Jason Sage and Fremont
19 Freewheelers Bicycle Club. Lopes argued that these new claims were supported by
20 evidence that the defendants provided information to the police department and district
21 attorney's office that caused a criminal complaint to be filed against Lopes based upon
22 the June 12, 2004 incident. Attached hereto as Exhibit C is a true and accurate copy of
23 plaintiffs' moving and supporting papers to amend the pleadings at trial in Case No.
24 HG06260161. Significantly, the authorities cited by Lopes in his Supplemental
25 Memorandum as the basis for amending the complaint in Case No. HG0626061 to add a
26 cause of action for malicious prosecution are the same cases cited in Lopes first amended
27

1 complaint in this action. See Count 18, *Blancett v. Burr* (1929) 200 Cal.App.61, 69;
2 *Sandoval v. Southern California Enterprises* (1950) 98 Cal. App.2d 240.

3 7. A hearing on plaintiffs' motion to amend the complaint in Case No.
4 HG06260161 occurred on July 17, 2007. At that time, Judge Harry R. Sheppard of the
5 Alameda County Superior Court denied plaintiffs' motion to amend the complaint.
6 (Transp. 10-14.) Attached hereto as Exhibit D is a true and accurate copy of the official
7 transcript of the oral argument on plaintiffs' motion to amend plaintiffs' complaint and
8 the Judge's ruling denying plaintiffs' motion. The court did not enter a separate written
9 order denying the motion to amend the complaint.

10 I declare under penalty of perjury under the laws of the State of California that the
11 foregoing is true and correct.

12 DATED: July 23, 2008



David I. Dalby

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within actions; my business address is One California Street, 18th Floor, San Francisco, CA 94111.

On July 23, 2008, I served the document(s) entitled: DECLARATION OF DAVID IAN DALBY IN RESPONSE TO JULY 9, 2009 ORDER AFTER HEARING on the interested parties in this action by placing true copies thereof enclosed in a sealed envelope(s) addressed as stated below:

(BY MAIL): I deposited such envelope in the mail at San Francisco, California. The envelope was mailed with postage fully prepaid. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

(VIA OVERNIGHT MAIL): I deposit such envelope to be placed for collection and handling via UPS following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for UPS. On the same day that material is placed for collection, it is picked by UPS at San Francisco, California.

(BY HAND DELIVERY): I delivered by hand each sealed envelope to the addressee(s) mentioned in the attached service mailing list.

(BY ELECTRONIC TRANSFER:) I caused such document(s) to be electronically served to the parties on the Service List maintained on Pacer's Website for this case.

(via U.S. Mail)
Cornelius Lopes
6251 Quartz Place
Newark, CA 94560
Plaintiff in Pro Per

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on July 23, 2008, at San Francisco, California.

Grace Casey